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7 UNITED STATES OF AMERICA,
8 Plaintiff,
9 v.
10 TIMBERLY HUGHES,
11 Defendant.

Case No. 18-cv-05931-JCS

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13 **ORDER DENYING WITHOUT
14 PREJUDICE STIPULATION AND
15 ADMINISTRATIVE MOTION AND
16 SETTING CASE MANAGEMENT
17 CONFERENCE**

18 Re: Dkt. Nos. 173, 174

19 After a bench trial, the Court previously found that the United States abused its discretion
20 in setting penalties for Defendant Timberly Hughes. The Court therefore remanded for further
21 administrative proceedings. Dkt. 171.

22 The United States has since recalculated Hughes's penalties, and the parties have now filed
23 a stipulation to reopen the case and set a schedule for further briefing on that issue. Dkt. 173. The
24 United States has also filed an administrative motion to file a declaration setting forth its new
25 calculation, which was not included in the trial record because it did not exist at that time. Dkt.
26 174.

27 It is not obvious that the United States' proposal—to use new evidence not presented at
28 trial in resolving what amounts to supplemental post-trial briefing—is permissible. At the very
least, taking full briefing on the merits of the new calculation while the form of its presentation is
in question may not be prudent. The parties' stipulation and the United States' administration
motion are therefore DENIED WITHOUT PREJUDICE, and a case management conference will
occur on January 6, 2023 at 2:00 PM via Zoom webinar to determine how to proceed, with
potential options including but not limited to: (1) the parties' proposal to submit briefing on the
merits while also litigating the manner in which the United States has presented its new

1 calculation; (2) motions for summary judgment or summary adjudication by either or both of the
2 parties; (3) reopening discovery; and/or (4) setting a further bench trial.

3 **IT IS SO ORDERED.**

4 Dated: December 19, 2022

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6 JOSEPH C. SPERO
Chief Magistrate Judge

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United States District Court
Northern District of California